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Filing date: **09/27/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91168732
Party	Plaintiff RA SCOTTSDALE CORP.
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Date	09/27/2007
Attachments	RAsecondamendednoticeofopp.pdf (14 pages)(319984 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: In The Raw (block letters)

Serial No.: 76/574049

Applicant: 2 Manatees, LLC

Opposer: RA Scottsdale Corp.

Opposition No.: 91168732

Serial No.: 76/574049

For the mark IN THE RAW

SECOND AMENDED NOTICE OF OPPOSITION

1. RA Sushi Holding Corp. (“RA Sushi”) is a Delaware corporation and is the owner of and successor in interest as to various RA marks, as noted below, pursuant to an assignment from the original Opposer in this matter, RA Scottsdale Corp. (“RA Scottsdale”). A Motion to Substitute RA Sushi for RA Scottsdale is now pending before the Trademark Trial and Appeal Board.

2. RA Sushi is the owner, by assignment from RA Scottsdale, of a federal registration for RA and design® (Registration No. 2209246). RA and design consists of a stylized RA with a circular background. Registration No. 2209246 is incontestable.

3. RA Sushi is also the owner, by assignment from RA Scottsdale, of a federal registration for RA® (block letters) (Registration No. 3087775).

4. RA Sushi is also the owner, by assignment from RA Scottsdale, of a federal registration for “It’s More Fun In The RA!”® (Registration No. 3087776).

5. RA Sushi, and its predecessors, have used each of these marks since 1997.

6. RA Sushi, and its predecessors, have used these marks in connection with RA Sushi Bar restaurants in California, Arizona, Nevada, Illinois, Texas and Florida.

7. These RA Sushi Bar restaurants have achieved great commercial success, favorable reviews and public acclaim.

8. These RA Sushi Bar restaurants have been awarded more than a dozen “Best of” awards.

9. Applicant has been operating its restaurants in Tulsa, Oklahoma under the names “In The Raw” and “In The Raw Sushi.”

10. Applicant’s restaurant is regularly listed as “In The Raw Sushi” in telephone, web and other listings, and not only as “In The Raw.”

11. Third party listings for Applicant’s restaurant regularly refer to Applicant’s restaurant as “In The Raw Sushi.”

12. On its own web promotions, Applicant has referred to itself as “In The Raw Sushi.” (Exhibit A).

13. The word “Sushi” often appears with or in close proximity to Applicant’s applied for mark, “In The Raw.”

14. Applicant’s menu features and/or has featured a presentation of “In The Raw” arranged in a circle with a circular background and with the word “sushi” included in the presentation.

15. On or about January 26, 2004, Applicant applied to register the particular mark “IN THE RAW SUSHI” in the U.S. Patent and Trademark Office under Application Serial No. 76/574,049 (the “’049 Application”). In the course of prosecution this became an application to register “In The Raw.”

16. On information and belief, Applicant’s In The Raw restaurants in Tulsa (hereafter the “In The Raw Sushi restaurants”) have received negative or critical reviews in the press.

17. On information and belief, Applicant’s In The Raw Sushi restaurants have received negative or critical reviews that have been posted by third parties on the internet.

18. For example, on the website “Sushi Reference,” In The Raw Sushi restaurants were described as being “generally disappointing,” with small overcooked entrees, having over salted and overpriced food, and having average to poor service. (Exhibit B).

19. On the very same “Sushi Reference” website, RA was reviewed as having very good sushi overall. (Exhibit C).

20. Applicant’s mark, as actually used, uses a circle design behind the words “In The Raw,” and “Sushi” just like Opposer uses a circle design behind RA. (Exhibit D).

21. Applicant’s mark so resembles Opposer’s RA® and RA and Design® marks as to make it likely, when applied to Applicant’s services, to cause mistake, to cause confusion and to deceive, with consequential injury to Opposer, to the trade and to the public.

22. Applicant’s mark so resembles Opposer’s “It’s More Fun In The RA!”® mark as to make it likely, when applied to Applicant’s services, to cause mistake, to cause confusion and to deceive, with consequential injury to Opposer, to the trade and to the public.

23. To the extent Applicant knew of Opposer’s use of RA and/or “It’s More Fun In The RA,” before adoption, Applicant’s adoption of IN THE RAW would then have been in bad faith.

24. Applicant is not entitled to a registration for IN THE RAW.

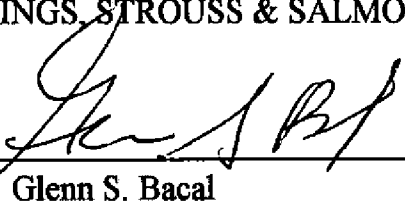
25. Opposer, and its parent and successor in interest RA Sushi, will be damaged by registration of IN THE RAW by Applicant.

THEREFORE, Opposer believes it would be damaged by approval for registration of Applicant’s application to register IN THE RAW, and respectfully asks that Application Serial No. 76/574049 be denied.

Respectfully submitted this 27th day of September, 2007.

JENNINGS, STROUSS & SALMON, PLC

By


Glenn S. Bacal

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Attorneys for Original Opposer RA Scottsdale
Corp. and its parent and successor in interest
RA Sushi Holding Corp.

EXHIBIT A

home

In The Raw Sushi is an experience in every sense of the word. It is a destination, not merely a place to eat, because In The Raw appeals to all of your senses the minute you enter the space. The architecture inspires, mixing a sleek modern style and a progressive Japanese vibe. The Sushi Bar is center stage and our cuisine, the star. Master chef Cody Stell and his team will prepare a wide array of unique, delicious dishes — from the fire-roasted Lobster Roll prepared tableside to the award-winning filet mignon with portabella mushroom demi-glace — creating their own brand of theatrics.

The service is A-list-ready, from the front of the house to the back. Attention to detail is second nature to every member of the staff. Appearance, presentation, interaction — every aspect of service is considered a critical part of the operation. And every patron will feel important, from reservation to departure.

Our state-of-the-art sound system lends a subtle energy to the entire space, setting themes of casual luxury and undeniable hipness. From Al Green to Green Day, 80s remix to pure funk, the music is a critical element to the overall experience. And, as the night rolls on, the music gets louder and more upbeat, but never too loud to kill a conversation.

It's sushi with a pulse. Cool and hip, but casual and inviting. In The Raw is truly an experience that you'll remember. The atmosphere, the music, the sights, and oh yes, the sushi — all come together to give you a sensory celebration. An experience you'll talk about, again and again.

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EXHIBIT B

In The Raw Sushi

Update the address and facilities of this location.

General links:

- Update the general restaurant information (name, sample prices, URL).
- Report another location of this establishment.
- Add comments about this restaurant.
- Get email when new information arrives.

Comments about this restaurant:

- From J. Taylor (last visit August 2005)

Variety of sushi: Very limited selection.

Freshness of sushi: Seemed stale.

Presentation of sushi: Average.

Generosity of sushi portions: Small portions.

Promptness of service: Slow.

Courtesy of service: Courteous.

Accuracy of service: Accurate.

Cleanliness - dining and visible kitchen areas: Clean.

Quality of nonsushi food: Adequate.

"I've eaten at In-the-Raw three times recently. The sushi were generally disappointing, the non-sushi food was adequately presented, but the small entrees were overcooked, oversalted and overpriced (sides extra); service was average to poor, with limited attention, some mistakes, little courtesy; clientele - mostly younger adults, some family; atmosphere - some tables enjoy good view of city, but the main bar in the dining area made the place loud, smoky, distracting, uneasy. I'll not go back."

- From Jack Splat (last visit July 2004)

Variety of sushi: Usual selection.

Freshness of sushi: Seemed stale.

Presentation of sushi: Average.

Generosity of sushi portions:

Somewhat smaller than usual.

Promptness of service: Very slow.

Courtesy of service: Courteous.

Accuracy of service: Accurate.

Cleanliness - dining and visible kitchen areas: Not that clean.

Cleanliness - restrooms: Clean.

Quality of nonsushi food: Poor.

"The last time I'd eaten at ITR was so much better than this time. Maybe the fact that they're the only sushi bar in town that has two locations makes them feel over-confident, like they're so far ahead of the competition that they don't have to try as hard. *Wrong!* Fuji, Tsunami and Asahi have surpassed ITR in almost every category. Get with it Dunwell, or should I say Dun-not-so-well-anymore?"

- From G. Mac (last visit August 2004)

Variety of sushi: Usual selection.

Promptness of service: Slow.

At this site

Up to: Tulsa -
Oklahoma - USA -
North America -
Worldwide - Top.

Go to: FAQ -
Glossary - Updates
- Index.

Ads by Goooooogle

Sushi Madness.

Search here for a full lineup of tasty sushi places near you.

sanfrancisco.citysearch.com

Sushi in Phoenix

Find A Nearby Restaurant With Phoenix's Online Local Search.
www.local.com

La Sushi

Restaurants
Your Guide to Eating Well in LA
Burgers to Fine Dining We know LA!
www.LA.com

Free Japanese Steakhouse

Get \$250 Gift Card To Dinner At Japanese Restaurant Fill Out Survey
JapaneseSteakhouse.Fox-Ofier.com

Advertise on this site

Other sites:

The Urban Pug.
Primetime Wellness.
New Orleans Food Community.

Freshness of sushi: Seemed stale.
Presentation of sushi: Average.
Generosity of sushi portions: Small portions.

Courtesy of service: Courteous.
Accuracy of service: Inaccurate.
Cleanliness - dining and visible kitchen areas: Not that clean.
Cleanliness - restrooms: Not that clean.
Quality of nonsushi food: Adequate.

“This is a yuppie hell-hole, and nothing more. The chef I had would not converse with us, and it wasn't because he was too busy. The portions were dinky, the wait too long, the atmosphere is overdone and too trendy. It seems more like a dance club or singles bar than a restaurant. This is where you go if you are looking for an aesthetically pleasing if not overstimulating atmosphere, but an overall bland food experience. Or, if you're looking for a rich yuppie sugar daddy with a penchant for raw fish, this is the place to go. I'd recommend Fuji over this place any day, because even though they're wicked slow, the portions are better and it feels more homey.

Disclaimer. Make sure you have read the full disclaimer located in the overview to this restaurant guide. Basically: I cannot vouch for the accuracy of any information on this page; remember that the comments are no more than the opinions of strangers; before you venture out to explore the places listed here, it would be a good idea to make sure they are still open, and to verify their exact locations.

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EXHIBIT C

Ra

3815 North Scottsdale Road.

Scottsdale, Arizona

Just opposite Bandera.

Voice: +1 990-9256.

Dinner hours: daily 5pm-1am.

Update the address and facilities of this location.

Links: generate a map of the area.

Sample prices:

- Ebi nigiri (shrimp), 2 pieces, \$5.-
- Maguro nigiri (tuna), 2 pieces, \$5.-
- Tobiko gunkan maki (smelt/flying fish roe), 2 pieces, \$5.-
- Uni gunkan maki (sea urchin), 2 pieces, \$9.-

General links:

- Update the general restaurant information (name, sample prices, URL).
- Report another location of this establishment.
- Add comments about this restaurant.
- Get email when new information arrives.

Other local restaurant guides:

- Phoenix New Times

Comments about this restaurant:

From Jamie Fike (last visit July 2003)

Variety of sushi: Somewhat broader than average.

Freshness of sushi: Very fresh.

Presentation of sushi: Somewhat nicer than average.

Generosity of sushi portions: Average.

Promptness of service: Prompt.

Courtesy of service: Courteous.

Accuracy of service: Accurate.

Cleanliness - dining and visible kitchen areas: Clean.

Cleanliness - restrooms: Clean.

"Overall sushi is very good and they have some great rolls with a southwestern flavor. Atmosphere is more important here. Chic decor and very loud modern music. Fun place. But, don't go here if you're planning on a nice, quiet sushi experience."

Disclaimer. Make sure you have read the full disclaimer located in the overview to this restaurant guide. Basically: I cannot vouch for the accuracy of any information on this page; remember that the comments are no more than the opinions of strangers; before you venture out to explore the places listed here, it would be a good idea to make sure they are still open, and to verify their exact locations.

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At this site

Up to: Phoenix -
Arizona - USA -
North America -
Worldwide - Top.

Go to: FAQ -
Glossary - Updates
- Index.

Ads by Goooooogle

Free Sushi Making Kit

Cookbook, Ingredients
And Tools Yours Free
Complete Our Survey
OnlineRewardCenter.com

Sushi

California rolls, sashimi
and more Find great
dining in San
Francisco
sanfrancisco.citysearch.or

Other sites:

The Urban Pug.
Primetime
Wellness.
New Orleans Food
Community.

EXHIBIT D

home

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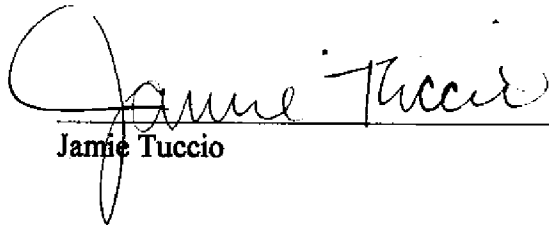
CERTIFICATE OF MAILING OR TRANSMISSION PURSUANT TO 37 C.F.R. §1.8

Application No.: 76/574049
Mark: IN THE RAW
Opposer: RA Scottsdale Corp.
Type of Filing: Second Amended Notice of Opposition

I hereby certify that on September 27, 2007 this Second Amended Notice of Opposition is being filed electronically with the United States Trademark Trial and Appeal Board 37 C.F.R. § 1.8.

I hereby further certify that on September 27, 2007 this Second Amended Notice of Opposition is being deposited with the United States Postal Service addressed to:

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John W. Cannon
Tadd Bogan
Jones Givens Gotcher & Rogan PC
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Tulsa, OK 74103-4309
Counsel for 2 Manatees, LLC



Jamie Tuccio